

## **REMARKS**

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 1, 4, 6, 15, 17, 24, 30, 38 and 44 were previously withdrawn from consideration, and are currently amended to be consistent with the claims from which they depend. Claims 3, 5, 14, 16, 28, 37 and 43 have been amended primarily to correct formal matters. The amendments to claims 1, 23 and 29 are supported by at least Figure 6 and the related description of that Figure in the current specification. No new matter has been added.

### **Objections to the Drawings and Specification**

Applicant has attached a replacement Figure 2 in which the horizontal and cross-section indicator is labeled 3-3 and the vertical cross-section indicator is labeled 4-4. Withdrawal of the objection is respectfully requested.

Various typographical errors have been corrected in the specification. Withdrawal of the objection to the specification is respectfully requested.

### **§ 112 Rejection**

Claims 3, 5, 14, 16, 23, 25-29, 31-37, 39-43 and 45-48 were rejected under 35 U.S.C. § 112, second paragraph, for using the word "mechanical" prior to the word "means" in claims 3, 5, 14, 16, 23, 29, 37 and 43. Claims 3, 5, 14, 16, 29 and 37 have been amended to recite a "moving means" and are now definite. Claims 23 and 43 no longer include a "means" limitation and are now definite. Withdrawal of this rejection is respectfully requested.

### **§ 102 Rejections**

Claims 1, 2 and 7-9 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Butterfield, US 4,965,707. Applicant respectfully traverses this rejection.

Butterfield fails to disclose a flame simulation apparatus comprising "a flame element coupled to a device that alters the position of the flame element," as recited in claim 1. The ribbons 14 disclosed by Butterfield are fixed to a rear panel of casing 2 with anchor points 15a and pins 16. The ribbons 14 tend to ripple or undulate in a current of air provided by a small fan unit 17 which is situated below the lower ends of the ribbons (see col. 3, lines 43-55 of Butterfield). The ribbons 14 are not "coupled to" the fan 17 and are not movable without air

movement provided by the fan 17. Therefore, Butterfield fails to disclose every limitation of claim 1, and the claims that depend from it.

Claims 1-3, 5, 7, 9, 12-14, 16, 18, 20, 23, 25, 27-29, 31, 32, 34, 37, 39, 40, 42, 43, 45, 46 and 48 were rejected under 35 U.S.C. § 102(b) as being anticipated by GB 2,315,543 ("GB '543"). Applicant respectfully traverses this rejection.

GB '543 fails to disclose a flame simulation apparatus including a flame element that is "viewable through the front panel" or otherwise "viewable to the observer," as recited in claims 1, 12, 23, 29, 37 and 43. GB '543 discloses light reflecting elements 25 secured to a rotating shaft 23, and tinsel strips 26 that each reflect light from lamp 21 upward and forward onto a screen 19. The elements 25 and strips 26 are not intended to be directly viewed by an observer. In fact, there is no disclosure in GB '543 that features 25, 26 should be viewed directly. In contrast, GB '543 provides multiple examples of how features 25, 26 can be design and specific materials that they can be made of in order to maximize their reflectivity onto screen. Furthermore, because of the position of these features behind screen 19 and fuel element 11, elements 25 and strips 26 are hidden from view by an observer. Therefore, GB '543 fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43, and the claims that depend from them.

Claims 23, 28, 37 and 39 were rejected under 35 U.S.C. § 102(b) as being anticipated by Korneliussen, US 6,155,837. Applicant respectfully traverses this rejection.

Korneliussen discloses vertically extending air tubes 5 (Figures 1-3) that are moved in side-to-side motion by a cam shaft 12 and stays 13 that are driven by motor 11. In another embodiment (Figures 4-6), air tubes 39 are secured to a diaphragm 40 that is secured by straps to rocker arms 35. The rocker arms 35 rock up and down based when actuated by horizontally extending axis 34. However, Korneliussen fails to disclose rotational motion of the air tubes 5, 39 about a vertical axis and further fails to disclose a mechanical device or moving means that "rotates the flame element about a vertical axis," as recited in claims 23 and 29. Therefore, Korneliussen fails to disclose every limitation of claims 23 and 29, and the claims that depend from them.

### § 103 Rejections

Claims 10 and 21 were rejected under 35 U.S.C. §103(a) as being over Butterfield in view of Hecker, US 4,965,707. Applicant respectfully traverses this rejection.

Butterfield fails to disclose or suggest every limitation of claims 1 and 12 for at least the same reasons discussed above related to the failure of Butterfield to disclose a flame element being coupled to a device to alter a position of the flame element. Hecker fails to remedy the deficiencies of Butterfield as it relates to claims 1 and 12. Therefore, Applicant submits that claims 10 and 21 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not otherwise concede the correctness of this rejection.

Claims 11 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Butterfield in view of Hess, US 4,965,707. Applicant respectfully traverses this rejection.

Butterfield fails to disclose or suggest every limitation of claims 1 and 12 for at least the same reasons discussed above related to the failure of Butterfield to disclose a flame element being coupled to a device to alter a position of the flame element. Hess fails to remedy the deficiencies of Butterfield as it relates to claims 1 and 12. Therefore, Applicant submits that claims 10 and 21 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not otherwise concede the correctness of this rejection.

Claims 8, 19, 26, 33, 41 and 47 were rejected under 35 U.S.C. §103(a) as being unpatentable over GB 2,315,543 in view of Butterfield. Applicant respectfully traverses this rejection.

GB '543 fails to disclose or suggest every limitation of claims 1, 12, 23, 29, 37 and 43 for at least the same reasons discussed above related to the failure of GB '543 to disclose a flame element that is viewable through the front panel or viewable by an observer. Butterfield fails to remedy the deficiencies of GB '543 as it relates to claims 1, 12, 23, 29, 37 and 43. Therefore, Applicant submits that claims 8, 19, 26, 33, 41 and 47 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not otherwise concede the correctness of this rejection.

Claims 10, 21 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over GB 2,315,543 in view of Hecker. Applicant respectfully traverses this rejection.

GB '543 fails to disclose or suggest every limitation of claims 1, 12 and 29 for at least the same reasons discussed above related to the failure of GB '543 to disclose a flame element that is

viewable through the front panel or viewable by an observer. Hecker fails to remedy the deficiencies of GB '543 as it relates to claims 1, 12 and 29. Therefore, Applicant submits that claims 10, 21 and 35 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not otherwise concede the correctness of this rejection.

Claims 11 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over GB 2,315,543 in view of Hess. Applicant respectfully traverses this rejection.

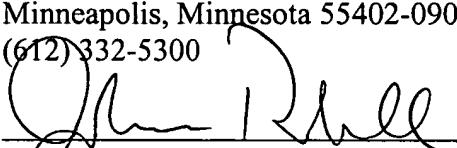
GB '543 fails to disclose or suggest every limitation of claims 1 and 12 for at least the same reasons discussed above related to the failure of GB '543 to disclose a flame element that is viewable through the front panel or viewable by an observer. Hess fails to remedy the deficiencies of GB '543 as it relates to claims 1 and 12. Therefore, Applicant submits that claims 11 and 22 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not otherwise concede the correctness of this rejection.

### Summary

In view of the above amendments and remarks, Applicant respectfully requests reconsideration of the application in the form of a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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